BEFORE THE TALBOT COUNTY BOARD OF APPEALS

IN THE MATTER OF * CASE NO. VAR-23-2

GREGORY AND TAMMY * VARIANCE REQUEST APPLICATION HADDAWAY

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The Board of Appeals (the "Board") held a hearing on September 25, 2023 in the Bradley Meeting Room, Court House, South Wing at 11 N. Washington Street, Easton, Maryland to consider the application of Gregory and Tammy Haddaway (the "Applicants"). The Applicants requested a variance for the property located at 5515 Landing Neck Rd., Trappe, MD 21673. Chairman Frank Cavanaugh, Vice Chairman Louis Dorsey, Jr., Board Members Paul Shortall, Ed Heikes, Zakary Krebeck, and Board Attorney Lance M. Young were present. Board Secretary Christine Corkell and Planner Elisa Deflaux appeared on behalf of the County.

STATEMENT OF THE CASE

The Applicants requested a variance of the required 50' side yard setback to 25' to permit the construction of a 1,150 square foot in ground swimming pool to include 3' pavers around the perimeter of the pool.

SUMMARY OF TESTIMONY

The Applicant Gregory Haddaway provided testimony on behalf of the Applicants. Chris Conley, on behalf of Coastal Pools, also testified. Coastal Pools will construct the swimming pool upon the grant of a variance.

Mr. Haddaway addressed the criteria for a non-Critical Area variance. He explained that the property has unique physical characteristics that necessitate a variance for a swimming pool. The lot is long and narrow. The location of a septic reserve severely limits where a pool could be constructed. Mr. Haddaway concedes that the pool could be built 30' from side boundary, as opposed to 25'. Mr. Conley also testified that the pool could be constructed at a distance of 30' from the side yard boundary. The setback for many other properties from the side yard is 25'. The 50' setback requirement here is due to Agricultural zoning designation of the adjacent property.

Mr. Haddaway testified that he purchased the property in 2004 knowing that it was a unique lot but he did not create the unique characteristics of the lot. It was built with the house sitting diagonal so as not to encroach on the side yard setbacks and septic reserve area. The pool will be used for private purposes and not for profit. The pool will be constructed behind the primary dwelling and deck and will not directly impact neighbors.

The Haddaway family has considered purchasing the adjacent lot so that a variance would not be necessary but the adjacent lot is not available for purchase. They considered whether it could be built in a position that is not directly behind the primary dwelling but ruled out that option because they deem it unsafe to not have direct line of sight to the pool from the back of the house.

Derwin Lowe resides at 5545 Landing Neck Rd. He owns the neighboring property. He testified that he does not object to the variance but appeared to ensure that any granted relief would not affect his own setback requirements or place any additional restrictions on his own property.

Mr. Conley advised that Lane Engineering will survey the property prior to any construction to ensure the pool is built pursuant to the setback variance that may be granted by the Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board finds that the Applicants have satisfied the standards for granting of the variance; however, the Board finds that the Applicants should be granted a variance that permits construction of a pool with a 30' side yard setback, as opposed to the 25' requested. The Board sets forth these additional findings:

A. Unique physical characteristics exist such that literal enforcement of the setback requirements would result in practical difficulty or unreasonable hardship in enabling the Applicant to develop the property.

The narrow size of the property presents a unique challenge of meeting side yard setbacks within the AC district, which requires 100' minimum lot size. The lot width on this property is minimum 150' and the side yard setbacks in that zoning district are 50'. The site plan provided by the Applicants clearly demonstrates the constraints of constructing anything within the allowable setbacks. It is apparent that the primary dwelling and garage were constructed at a diagonal angle because of these constraints.

- B. The need for a variance is not based upon circumstances which are self-created or self-imposed. The property has existed in its current configuration for decades. The property owner has not made changes to the configuration.
- C. The variance is not requested for greater profitability or lack of knowledge of the restrictions. The pool will be used for private purposes and is necessary due to the narrowness of the lot.
- D. The variance is not contrary to the public interest and will not be a detriment to adjacent or neighboring properties.
- E. The variance will not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. The Board finds that altering the variance request to a 30' setback, as opposed to a 25' setback will achieve the minimum adjustment necessary to relieve the Applicants of the practical difficulty.

Mr. Krebeck moved that the Applicants be granted a variance of the required 50' side yard setback to 30' to permit the construction of an in ground swimming pool to include 3' pavers around the perimeter of the pool. The variance is subject to staff conditions. The motion was seconded by Mr. Heikes. Based upon the foregoing, the Board finds, by a unanimous vote, that the variance is granted subject to staff conditions.

- The applicant shall make an application to the Office of Permits and Inspections, and follow all rules, procedures, and construction timelines as outlined regarding new construction.
- The Applicant shall commence construction of the proposed improvements within eighteen (18) months of the date of this Decision set forth below.

IT IS THEREFORE, this 10th day of October, 2023, ORDERED that the Applicant's request for a variance is GRANTED.

Frank Cavanaugh, Chaoman